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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

ORCHID ISLAND TRS, LLC (formerly
known as Opteum Financial Services, LLC)
and BIMINI CAPITAL MANAGEMENT,
INC. (formerly known as Opteum Inc.)

Plaintiffs,

v.

INDYMAC BANCORP, INC. and
INDYMAC BANK, F.S.B.

Defendants.

Civil Action No. 07-Civ. 9550 (LSS)

DECLARATION OF YEVGENY KLIMOV

YEVGENY KLIMOV, of full age, declares as follows:

1. I am a Managing Director with DOAR Litigation Consulting ("DOAR"), 170 Earle Avenue, Lynbrook, New York, and have been working for the firm since September, 1992. Plaintiffs have retained DOAR to perform computer forensic and electronic discovery services in the matter captioned above. I submit this Declaration pursuant to 28 U.S.C. § 1746(2) in support of plaintiffs' motion for leave to file an Amended Complaint to add a cause of action pursuant to New Jersey's Computer-Related Offenses Act, N.J.S.A. 2A:38A-3.

2. Among my duties are managing DOAR's Data Forensics practice group, which involves electronic data identification, chain of custody documentation, evidence handling, data acquisition, data authentication, data analysis and expert reporting.

3. Before I became a Managing Director within the Discovery Consulting division at DOAR, I was a Director of Data Forensics with many of the same responsibilities relating to case management and litigation consulting.

4. I am a published author in publications such as the New York Law Journal, Law Technology News, and have contributed to other industry publications such as those offered by NITA (National Institute for Trial Advocacy). I am also a recognized speaker and accredited CLE instructor and often participate in discussion panels and forums on the current issues surrounding the preservation and collection of electronic data, the Federal Rules of Civil Procedure and how they impact the way the justice system functions in the current age of technology.

5. As an expert in the field of information and communication technology, I have lectured on recent advances in data collection and analysis techniques as they relate to corporate litigation and regulatory investigations. I also contribute to the Temple University Masters program, LLM in Trial Advocacy, as an acting adjunct professor lecturing on litigation discovery technology. I have testified as an expert in federal court regarding Internet technology and information gathering issues, prepared affidavits and served as a fact and expert witness outlining proper methods for preservation, collection, review and production of electronic data on behalf of my clients.

6. I graduated from Hofstra University with a Bachelors degree in Electrical Engineering with a concentration in Computer Science and Mathematics.

Documents Retrieved from Plaintiffs' Computers

7. Plaintiffs have retained DOAR to assist in discovery of electronically stored data and to conduct a forensic review of computers bearing identification numbers that were assigned to plaintiffs' former employees.

8. Recently, DOAR took possession of the following computers, from which DOAR retrieved documents as follows:

John Palmiotto – Laptop – 9P8V391 (Exhibit A)

- “Assumed lease site financials” email dated May 4, 2007 from Palmiotto to Jason.Kenoyer@indymacbank.com.
- “Assumed lease site financials” email dated May 4, 2007 from Jason.Kenoyer@indymacbank.com to Palmiotto
- “Emits Traning [sic] Tues May 8th” email dated May 5, 2007 from Palmiotto to Anne Statiroudis
- “Thursday” email dated May 8, 2007 from Palmiotto to SJohnson@nymc.com
- “Thursday” email dated May 8, 2007 from SJohnson@nymc.com to Palmiotto
- “Lets discuss retention monies for you and trying to see if we can make a run at this.” email dated May 11, 2007 from Palmiotto to Rick Floyd.
- “did Julie send out Indy offer letters?” email dated May 17, 2007 from Palmiotto to Rick Floyd.
- “Paramus office space – temporary” email dated May 21, 2007 from Dale.Lazerson@indymacbank.com to Palmiotto
- “i [sic] heard rumors that you will be running NY and NJ, give me a call i [sic] would really like to talk to you about things 617 308 5723 DSB” email dated May 29, 2007 from DBolton@nymc.com to Palmiotto
- “Opteum Albany Regional Office” email dated June 4, 2007 from Thomas Pompilio to Palmiotto

Craig Kowalski – Laptop – DN9YB71 (Exhibit B)

- “Lender Services Agreement” email with attachments dated May 15, 2007 from SJohnson@nymc.com to craigkowalski@optonline.net, and dated May 17, 2007 from craigkowalski@optonline.net to Craig Kowalski.

- “Rate Sheet and P+L” email with attachments (excerpts attached) dated May 15, 2007 from SJohnson@nymc.com to craigkowalski@optonline.net and mpalmiot@nycapp.rr.com, and dated May 17, 2007 from craigkowalski@optonline.net to Craig Kowalski.
- On May 29, 2007, between 7:02 p.m. and 7:35 p.m., a total of 54 emails with 66 attachments were sent from this computer to “The Kowalski’s” (excerpts and list attached at Exhibit B).

Sharon Dellay – Laptop – 41QD241 (Exhibit C)

- Between May 1, 2007 and June 1, 2007, 304 files and folders listed as Exhibit C were accessed from this laptop. In addition, 281 of these were located in the Recycler portion of the drive indicating that they were deleted.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 13, 2008 in Lynbrook, New York.

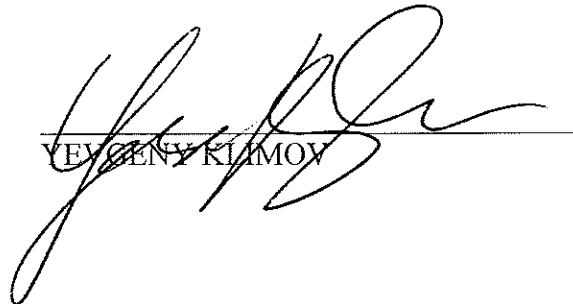

YEVGENY KLIMOV

EXHIBIT A

From: John Palmiotto
Sent: 5/4/2007 2:54:28 PM
To: 'Jason.Kenoyer@indymacbank.com'
Subject: Re: Assumed lease site financials

No question I do thanks Jason

----- Original Message -----

From: Kenoyer, Jason <Jason.Kenoyer@indymacbank.com>
To: John Palmiotto
Sent: Fri May 04 14:52:15 2007
Subject: RE: Assumed lease site financials

Thanks John. Just wanted to make sure I knew what was going on there.

Jason Kenoyer
Mergers & Acquisitions
Indymac Bank
626.535.8667
jason.kenoyer@indymacbank.com

-----Original Message-----

From: John Palmiotto [mailto:JPalmiotto@opteum.com]
Sent: Friday, May 04, 2007 11:51 AM
To: Kenoyer, Jason
Subject: Re: Assumed lease site financials

Hi Jason,
That one as Rick has mentioned is one we are willing to let go. We have a new small sales staff there that will close about 2.0m this month. They are willing to work out of a more cost effective space arrangement to maintain an opportunity here. They are improving but truthfully are not a high potential group. I do believe though that they can improve under Indy and if their overhead expense is contained they may be able to contribute.
Thanks

----- Original Message -----

From: Kenoyer, Jason <Jason.Kenoyer@indymacbank.com>
To: John Palmiotto
Sent: Fri May 04 14:23:35 2007
Subject: Assumed lease site financials

Hey John,

We put together a summary of the leases we are likely to assume under our transaction and I wanted to ask you what is going on with Mt. Laurel? Is it still operating? I ask because the P&L doesn't reflect any economics.

Jason Kenoyer

Mergers & Acquisitions

Indymac Bank

626.535.8667

jason.kenoyer@indymacbank.com

From: John Palmiotto
Sent: 5/5/2007 9:25:13 AM
To: Anne Statiroidis
CC: Julie Branch; Pam Long
Subject: RE: Emits Traning Tues May 8th

Stick with Ops staff for this round and yes definitely order lunch

From: Anne Statiroidis
Sent: Fri 5/4/2007 12:01 PM
To: John Palmiotto
Cc: Julie Branch; Pam Long
Subject: Emits Traning Tues May 8th

John

Indy wants to train us in person on May 8th 2 – 3:30 pm. Pam is sending out a calendar notice. I didn't know if you want to include any of the sales staff. I was going to invite all the processors and the underwriters. Also, not sure if you wanted to do a lunch first?

Let me know.

Anne Statiroidis
NE Regional Ops Manager
W115 Century Road
Paramus, NJ 07652

Direct Line 201 909-7956
Star Dial 3916
Cell 201 407-8501
Fax 877 225-6348
astatiroidis@opteum.com

From: John Palmiotto
Sent: 5/8/2007 12:10:52 PM
To: Johnson, Scott H.
Subject: RE: Thursday

This email takes me by surprise I will call you

John M. Palmiotto

Opteum Financial Services

Senior Vice President Northeast Region

W115 Century Road

Paramus, NJ 07652

(201)225-2000

Star Dial 3947

Fax: 877-331-5664

cell: (518)469-2441

jpalmiotto@opteum.com

From: Johnson, Scott H. [mailto:SJohnson@nymc.com]
Sent: Tuesday, May 08, 2007 11:44 AM
To: John Palmiotto
Subject: Thursday

John,

I understand that we are going to get together on Thursday!

I am looking forward to meeting you – as I have heard great things about you and your team!

What you are facing right now is very challenging – but also exciting. I have been through about 10 different mergers and acquisitions – some that I controlled and some that I did not.

I would love to spend some time on the phone with you discussing your group – your needs and your expectations.

You can call me anytime at 800-392-6167. If you don't get me live – punch your phone number in and I will call you back.

Have a GREAT day!

Scott

Scott Johnson

Divisional President

RLG - East

The New York Mortgage Company

a division of Indymac Bank

Phone: 800-392-6167

Fax: 888-659-4348

sjohnson@nymc.com

www.nymc.com <<http://www.nymc.com/>>

This message contains information which may be confidential and privileged.

Unless you are the addressee (or authorized to receive for the addressee),
you may not use, copy or disclose to anyone the message or any information
contained in the message. If you have received the message in error,
please advise the sender by reply e-mail @nymc.com, and delete the message.

Thank you.

Attachment: John Palmiotto.vcf

Attachment: image001.gif

John Palmiotto
Vice President Northeast Region
Opteum Financial Services
Corporate

OFS - Corporate
W115 Century Road
3rd Flr
Paramus, NJ 07652
United States

201-225-2017 (Work Voice)
518-469-2441 (Voice Cell)

JPalmiotto@opteum.com (Preferred Internet)

Version

2.1

Name

Family: Palmiotto
First: John
Middle:
Prefix:
Suffix:

Formatted Name

John Palmiotto

Organization

Opteum Financial Services
Corporate

Title

Vice President Northeast Region

Telephone Number

201-225-2017

(Work Voice)

Telephone Number

518-469-2441

(Voice Cell)

Address

(Work)

P.O. Address:

Extended Address: OFS - Corporate

Street: W115 Century Road
3rd Flr
Locality: Paramus
Region: NJ
Postal Code: 07652
Country: United States

Delivery Label (Work)

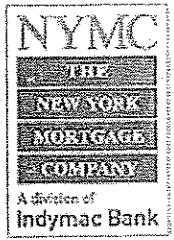
OFS - Corporate
W115 Century Road
3rd Flr
Paramus, NJ 07652
United States

Electronic Mail Address (Preferred Internet)

JPalmiotto@opteum.com

Last Revision

20060830T185948Z



From: John Palmiotto
Sent: 5/11/2007 9:19:39 PM
To: Rick Floyd
Subject: Re: Lets discuss retention monies for you and trying to see if we can make a run at this.

Thanks let's catch up monday - have a good weekend jp

----- Original Message -----

From: Rick Floyd
To: John Palmiotto
Sent: Fri May 11 16:54:25 2007
Subject: Lets discuss retention monies for you and trying to see if we can make a run at this.

I also mention to Zimmer about Indy and the NE and he wants me to see what you and I can work out here firstmmworking on it for you and I. Thanks Rick

Sent from my BlackBerry Wireless Handheld

From: John Palmiotto
Sent: 5/17/2007 12:29:22 PM
To: Rick Floyd
Subject: Re: did Julie send out Indy offer letters ? Just heard a rumor, but wouldn't think so.

not know where that came from I told you they are throwing numbers at me

----- Original Message -----

From: Rick Floyd
To: John Palmiotto
Sent: Thu May 17 12:18:25 2007
Subject: did Julie send out Indy offer letters ? Just heard a rumor, but wouldn't think so.

Rick E. Floyd | Executive Vice President

Opteum Financial Services

Office: 770-951-6001 | Cell: 770-265-7760

Fax: 678-585-5500 | Toll-Free: 866-226-1616

Star Dial: 3301 | rfloyd@opteum.com

NYSE: OPX

From: Lazerson, Dale
Sent: 5/21/2007 3:39:18 PM
To: julieimn2@hotmail.com; John Palmiotto
Subject: Paramus office space - temporary

Perm space can be achieved; temp – more difficult. Regus Executive suites have a center in Saddlebrook. If for approx 60-90 days, could an exec suite work for your Paramus-based team? (assuming Regus had space). I do have something that might work as 'temp' in a building we identified w/perm space for you, and I will discuss further during the 1p.m. call, but as an alternative, could exec suites work?

Dale A. Lazerson

First Vice President

Corporate Real Estate

Indymac Bank, F.S.B.

Phone: (626) 535-5649

Fax: (626) 585-5026

dale.lazerson@indymacbank.com

www.indymacbank.com

From: Bolton, David S.
Sent: 5/29/2007 1:36:47 PM
To: John Palmiotto
Subject: i heard rumors that you will be running NY and NJ, give me a call i would really like to talk to you about things 617 308 5723 DSB

David S Bolton, Sr Private Mortgage Banker

The New York Mortgage Company

a division of IndyMac Bank, F.S.B.

313 Washington Street

Newton, MA 02458

Cell - 617 308 5723

Direct - 617 928 7137

Fax - 866 257 3293

Dbolton@nymc.com

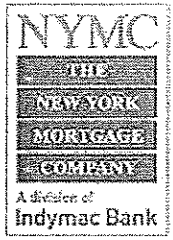
www.nymc.com

This message contains information which may be confidential and privileged.

Unless you are the addressee (or authorized to receive for the addressee), you may not use, copy or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by reply e-mail @nymc.com, and delete the message.

Thank you.

Attachment: image001.gif



From: Thomas Pompilio
Sent: 6/4/2007 10:05:05 AM
To: C Clifton; Henry Cronk Esq.
CC: John Palmiotto; Rick Floyd; Grace Currid; Peter Norden; Marty Levine
Subject: FW: Opteum Albany Regional Office
Importance: High

Chris & Henry,

As directed, I have called John Palmiotto and informed him that Opteum is revoking the original Release, that Sue Anderson has not accepted a new lease from Indy Mac and that he has to vacate the premises. John told me he wants Chris to call him directly and that he will no longer accept any e-mails from me or Henry.

Tom

From: Palmiotto, John [mailto:John.Palmiotto@imb.com]
Sent: Monday, June 04, 2007 9:47 AM
To: Thomas Pompilio; Lazerson, Dale
Cc: Henry Cronk Esq.; C Clifton; Schnall, Steven
Subject: RE: Opteum Albany Regional Office

You guys signed a release - nothing personal

From: Thomas Pompilio [mailto:TPompilio@opteum.com]
Sent: Mon 06/04/2007 6:45 AM
To: Palmiotto, John
Cc: Henry Cronk Esq.; C Clifton
Subject: Opteum Albany Regional Office

Good Morning John,

I just tried to reach you on your cell phone. I have just spoken with Susan Anderson this morning who informed me that you are occupying our office. Since Opteum has not agreed to terminate its lease on June 1st, you will have to immediately vacate the premises. Sue has been instructed to change the locks.

Nothing personal, just business.

Regards,
Tom